IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1095 OF 2005

Chandrakant Eknath Pawar & ors. Appellants

V/s.

Dinkar Ramchandra Pawar & ors. Respondents

Mr. K.V. Saste for the Appellants
Mr. Kuldeep S. Patil for Respondent no.1,2 & 4.

CORAM : ANOOP V. MOHTA,J.

DATED : 11th July, 2007

P.C.

The Suit is filed by the plaintiff-respondent for declaration of ownership and perpetual injunction against the defendants in respect of land Gat no. 904 to 907 situated at Nahavi, Taluka Khanapur, District Sangli. The Civil Judge, Junior Division by order dated 28-12-1993 decreed the suit as under:

"The Suit is partly decreed.

The Plaintiffs Nos. 1 to 3 are entitled to 1/4th share as well as plaintiff No. 4 also entitled to 1/4th share in suit lands mentioned in plaint para 1, of village Nahavi (Khanapur).

> The suit for perpetual injunction, against the defendants, in respect of suit lands, is hereby dismissed."

2. The learned additional District Judge, Sangli by order dated 23-2-2005 maintained the same by dismissing the appeal filed by the appellant.

3. The facts which are not in dispute as are reflected in para-3:-

> The suit lands are ancestral lands of the plaintiffs and the defendants. According to the plaintiffs, the plaintiffs, Nos. 1 to 3 are having 1/4th share and plaintiff No. 4 is having 1/4th share in suit lands. Similarly, the defendants Nos. 1 to 3 are having 1/4th share and defendants Nos. 4 and 5 are having 1/4th share in suit lands. As per thier respective shares, the parties to suit are in possession of suit lands. They are cultivating their respective shares, years together. It is also avered that, the plaintiffs and defendants are co-owners of the

suit lands. In Revenue Records, the plaintiffs and defendants are shown as owners and possessors of their respective shares.

Based on that and in view of the undisputed documentary evidence available on record, though parties failed to lead any oral evidence, there is no perversity as such which is pointed out to interfere with the findings arrived at by the trial Court and confirmed by the Appellate Court. By these decrees the Court has declared the entitlment of the plaintiffs as referred in above para. By the same stroke the entitlment of the defendant including appellant also remained intact. It also means that the plaintiffs and defendants are declared owner of the suit lands so called in respect of above shares.

4. The contention as raised by the learned counsel appearing for the appellant that the issue of tenancy as contemplated under the Bombay Prevention of Fragmentation and Consolidation of HOldings Act, 1947 ought to have been considered by the Court and matter should have been referred as required is untenable.

5. Considering the reasoning given and in the

facts and circumstances of the case as there is no question of any dispute about the tenancy rights as such specially when both the parties have been declared as owner of the land. There is no dispute about any tenancy right as such. The appellant being owner just cannot claim or raise any issue about the tenancy or against co-owners.

6. The reasoning given by the Courts below, therefore, is within the framework of law as well as of record. Resultantly, the second appeal is dismissed.

[ANOOP V. MOHTA, J.]